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**Francis vs Francis**

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**SooperKanoon Citation** : sooperkanoon.com/1905349

**Court** : Kerala

**Decided On :** Oct-29-2019

**Judge** : Honourable Mr. Justice P.Somarajan

**Appeal No.** : RSA/574/2004

**Appellant** : Francis

**Respondent** : Francis

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN TUESDAY, THE 29TH DAY OF OCTOBER 2019 / 7TH KARTHIKA, 1941 RSA.No.574 OF 2004 AGAINST THE JUDGMENT & DECREE DATED 05-01-2004 IN AS 435/2000 OF ADDITIONAL DISTRICT COURT, THRISSUR AGAINST THE JUDGMENT & DECREE DATED 23-08-2000 IN OS 479/1997 OF MUNSIFF COURT ,VADAKKANCHERRY APPELLANT: APPELLANT/IST DFENDANT: FRANCIS, EMMATTY HOUSE, PANNISSERY DESOM, ALOOR VILLAGE, THALAPPILLY TALUK. BY ADVS. SRI.S.V.BALAKRISHNA IYER (SR.) SRI.G.UNNIKRISHNAN SRI.P.B.KRISHNAN SRI.P.M.NEELAKANDAN SRI.P.B.SUBRAMANYAN SRI.SABU

GEORGE SMT.B.ANUSREE SRI.MANU VYASAN PETER RESPONDENTS: RESPONDENTS/PLAINTIFF & DEFENDANTS 2 TO 4

1 FRANCIS, PORATHUR HOUSE, ARIYANOOR DESOM, KANDANASSERY VILLAGE,, THALAPPILLY TALUK. 2 FRANCIS, (DIED) EMMATTY HOUSE (LEGAL HEIR) MATTOM DESOM, ALOOR VILLAGE, THALAPPILLY TALUK. (THE APPELLANT IS EXEMPTED FROM IMPLEADED THE LEGAL REPRESENTATIVES OF THE DECEASED 2ND AND 4TH RESPONDENTS AS PER ORDER DATED 08.11.2018 IN IA.NO.1/2018 AND 2/2018 RESPECTIVELY). 3 KUMARAN S/O. KANDIYOOR KARAKKAN (LEGAL HEIR) DO. DO. 4 SANKARJI MASTER (DIED)(LEGAL HEIR) S/O. KANDIYOOR RAVUNNY, DO. DO. (THE APPELLANT IS EXEMPTED FROM IMPLEADED THE LEGAL REPRESENTATIVES OF THE DECEASED 2ND AND 4TH

RSA.No.574 OF 2004 2

RESPONDENTS AS PER ORDER DATED 08.11.2018 IN IA.NO.1/2018 AND 2/2018 RESPECTIVELY). ADDL. (SUPPLEMENTAL) RESPODENTS 5 TO 11: ADDL.R5 THANKA, W/O.KANDIYOOR KARAKKAN KUMARAN,KANDIYOOR HOUSE,P.O.MATTOM, TRISSUR DISTRICT. ADDL.R6 SHANTA, ADDL.R7 MOHANAN, ADDL.R8 GOPI, ADDL.R9 LALITHA, ADDL.R10 PUSHPA, ADDL.R11 UNNIKRISHNAN, LR'S OF THE DECEASED R3 ARE IMPLEADED AS SUPPLEMENTAL RESPONDENTS 5 TO 11 VIDE ORDER DATED 31.07.2006 IN IA.1987/2004. R1 BY ADV. SRI.T.SETHUMADHAVAN (SR.) R1 BY ADV. SRI.JAYKAR.K.S. R1 BY ADV. SMT.M.R.MINI R1 BY ADV. SMT.PREETHY KARUNAKARAN R1 BY ADV. SRI.R.RAJESH KORMATH R1 BY ADV. SRI.RAHUL VARMA R1 BY ADV. SRI.V.S.ROBIN R1 BY ADV. SMT.SANJANA R.NAIR THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON

29.10.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RSA.No.574 OF 2004 3

## JUDGMENT

A suit for fixation of eastern boundary and southern boundary ended in a decree in both the courts below, against which the first defendant came up with this appeal.

2. 'A' schedule is the property of plaintiff having an extent of 60 cents + 45.5 cents comprised in survey No.183/2. The suit is one for recovery of

encroached portion as well, and for fixation of eastern and southern boundary. The first defendant is having property in survey No.188/2. The third and 4th defendants are having property in survey No.188/1. The second defendant is having property in survey No.183/1. Admittedly, the survey commissioner, who visited the property had measured and located the property based on the old survey plan. The old survey plan includes the sub division RSA.No.574 OF 2004 4 thereon and shows the dividing line between each and every sub division. Ext.C3 is the plan prepared by the commissioner which was accepted by both the courts below. The dark line denotes and indicates the survey and sub division boundaries. Admittedly, the property belonged to the plaintiff and the defendants are situated in different survey and sub division numbers. As such there cannot be any question of overlapping. The commissioner has located the property based on the old survey plan and located the encroached portion by two plots B and E more specifically B out of the property of defendant Nos.3 and 4 and E from the property of first defendant. A location of the teak tree also shown in that encroached portion, comprised in survey No.183/2. The resurvey has been subsequently conducted and finalized during the pendency of the suit, but the boundary already settled by earlier RSA.No.574 OF 2004 5 surveyor cannot be redefined under the guise of a

resurvey. The legal position was summarized and settled by this court in RSA No.527 of 2004 dated 25.10.2019 (The Cheriyanad Grama Panchayath v. The State of Kerala and others). The recovery granted by the trial court and the first appellate court based on old survey requires no interference from this court. No substantial question of law involved

in the appeal. Appeal fails, dismissed. No costs. Sd/- P.SOMARAJAN, JUDGE pm // TRUE COPY // PA TO JUDGE

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